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**R.N.R.**

**Before Ajai Lamba, J.**

**AMARJIT KAUR,—Petitioner**

*versus*

**STATE OF PUNJAB & OTHERS,—Respondents**

**CWP No. 7388 of 2009**

6th August, 2010

*Constitution of India, 1950—Art.226—Husband of petitioner serving in police killed by terrorists—Claim for family pension—Non-release of family pension as permissible under rules—Denial of rightful claim of petitioner without any ground—No explanation for delay in payment of arrears—Petitioner made to suffer on account of capricious, erratic and injudicious approach and action of respondents—Petitioner held entitled to interest @18% p.a. on arrears.*

*Held*, that the special family pension as permissible to the petitioner was not paid since February, 1991 till February, 2008. No reason, plausible or otherwise, for non-release of the amount due is coming forth. There is no explanation for delay in payment of arrears. Only the responsibility is being shifted between Senior Superintendent of Police, Patiala and the Accountant General, Punjab. None, however, seems to consider the predicament of the widow who lost her son to the cause of nation, however, was paid a paltry sum of Rs. 375 per month as special family pension,

though she was entitled to Rs. 1075 per month in the year 1991 and at a higher rate with effect from 1st January, 1996. The Senior Superintendent of Police, Patiala, it seems had recommended the case for release of the correct and rightful amount to the petitioner, however, the Accountant General, Punjab has not come up with any explanation for not paying the amount due and yet it has been said on behalf of the Accountant General that the Senior Superintendent of Police, Patiala is required to pay the interest.

(Para 15)

*Further held*, that the petitioner has been made to suffer on account of capricious, erratic and injudicious approach and action of the respondents. The respondents have utilized the amount that was due to be paid to the petitioner for considerable period.

(Para 16)

R.K. Chopra, Advocate, with Ms. Maninder, Advocate, *for the petitioner(s)*

Ms. Charu Tuli, Sr. DAG Punjab.

### **AJAI LAMBA, J. (ORAL)**

(1) This civil writ petition has been filed under Articles 226 and 227 of the Constitution of India praying for issuance of a writ in the nature of certiorari quashing order dated 12th February, 2009,---*vide* which, the claim of the petitioner for interest on delayed payment of pension has been rejected.

(2) It transpires that the son of the petitioner namely Constable Gurmukh Singh, who was serving in Punjab Police was killed by terrorists on 4th February, 1991. As per instructions issued by the State of Punjab, the petitioner being the mother of deceased Constable Gurmukh Singh, is entitled to special family pension equal to the pay last drawn by the deceased-employee. The petitioner, however, was granted a meager family pension @ Rs. 375 per month with effect from 5th February, 1991. The said special family pension was increased to Rs. 1,310 per month with effect from 1st January, 1996.

(3) It has been brought out that the petitioner was entitled to pension @ Rs. 1,075 per month with effect from 5th February, 1991 till 31st December, 1995. The petitioner was entitled to revised pension @ Rs. 3,279 with effect from 1st January, 1996. The other persons similarly situated as the petitioner were allowed special family pension at a higher rate. Aggrieved by denial of rightful claim of the petitioner, the petitioner represented to the respondents. It transpires that pension at enhanced rate was released to the petitioner on 19th February, 2008 as is made out from order Annexure P-4.

(4) Since interest was not paid to the petitioner on the arrears, the petitioner filed CWP No. 17398 of 2008 praying for issuance of directions to the respondents to grant interest on delayed payment of pension. The matter was disposed of,—*vide* order dated 1st October, 2008 with the observations that the petitioner may file a representation to the respondents who would take a decision within three months of its receipt.

(5) The petitioner in deference to orders passed by this Court on 1st October, 2008, filed a detailed representation praying for grant of interest on delayed payment of pension and other pensionary benefits. Representation has been placed on record as Annexure P-6.

(6) A decision has been taken by Senior Superintendent of Police, Patiala,—*vide* the impugned order Annexure P-7 dated 12th February, 2009. The claim of the petitioner has been rejected by the said officer saying that the office of Senior Superintendent of Police had recommended the pension as permissible to the petitioner under the Rules/instructions. The Accountant General, Punjab, however, raised certain objections. Even the objections were removed and pension papers were re-submitted. Gist of the decision taken by the Senior Superintendent of Police, Patiala is that it is not at the instance of the said officer that less pension was paid to the petitioner and, therefore, the said authority is not liable to pay interest.

(7) Exact reference to the relevant portion of reply *viz.* para No. 13 would be relevant :—

*“13. That in reply to para No. 13 of the petition, it is submitted that there was no delay on the part of the respondent No. 3 to forward the case of family pension to the Accountant*

*General Punjab, Chandigarh, because the respondent No. 3 forwarded the family pension case of the petitioner;--- vide Letter No. 13013/B dated 20th May, 1991 to Accountant General, Punjab Chandigarh. The delay was caused by the Accountant General Punjab, Chandigarh, who did not approve the case of the petitioner for family pension at the rate of Rs. 1075 as recommended by respondent No. 3, rather approved the case of family pension to the tune of Rs. 375. The petitioner has impleaded Accountant General, Punjab, Chandigarh as party in his earlier writ petitions, but in the present petition, the petitioner did not impleaded Accountant General, Punjab, Chandigarh as party."*

(8) The Accountant General, Punjab has filed reply wherein a very unfortunate stand has been taken in para No. 4 which is to the effect that so far as payment of interest due to any delay in releasing family pension is concerned, it is, of course, to be made by the State Government in view of Punjab Government instructions.

(9) I have considered the issue in the context of the pleadings and the arguments addressed.

(10) In effect, it is the admitted case that Senior Superintendent of Police, Patiala had sanctioned special family pension case of the petitioner as per instructions to the Accountant General. It is the Accountant General who reduced the amount of family pension to the tune of Rs. 375 per month from the amount due i.e. Rs. 1,075 per month to be paid with effect from 5th February, 1991. The stand of the concerned authorities have been extracted above.

(11) The facts clearly establish that there has been delay in release of pension. So far as contest between the S.S.P., Patiala and Accountant General in regard to the liability to bear the interest is concerned, it would be de hors the right of the petitioner.

(12) The fact that the petitioner lost her son to the cause of the nation cannot be lost sight of. Considering the interest of surviving families in such cases, instructions have been issued to grant special family pension

to such families. The petitioner is the mother of the deceased-employee (and a widow). Rightful claim of the petitioner has been denied without any grounds although the sanctioning and recommending authority viz. the Senior Superintendent of Police, Patiala had recommended the rightful claim of the petitioner.

(13) In regard to rate of interest to be paid in such circumstances, reference has been made to **Vijay L. Mehrotra versus State of U.P. and others, (1)** wherein following has been held in para No. 4 :-

*"4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement i.e., 31st August, 1997 till the date of payments."*

(14) Reference in this regard has also been made to **R.S. Randhawa versus State of Punjab and others, (2)** wherein following has been held in para No. 8 :-

*"8. Since a Government employee on his retirement becomes immediately entitled to pension and other benefits in terms of the Pension Rules, a duty is simultaneously cast on the State to ensure the disbursement of pension and other benefits to the retiree in proper time. As to what is proper time will depend on the facts and circumstances of each case but normally it would not exceed two months from the date of retirement which time limit has been laid down by the Apex Court in M. Padmanabhan Nair's case (supra). If the State commits any default in the performance of its duty thereby denying to the retiree the benefit of the immediate use of his money, there is no gainsaying the fact that he gets a right to be compensated and, in our opinion, the only way of compensate him is to pay him interest for*

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(1) (2001) 9 S.C.C. 687

(2) 1997 (3) R.S.J. 318

*the period of delay on the amount as was due to him on the date of his retirement. Again, to what should be the rate of interest, it should, in our view, be generally 12% unless the circumstances of a particular case warrant the payment of a higher rate which may extend to even 18%.*

9. *The question that now arises for our consideration is whether a retiree can approach this Court under Article 226 of the Constitution to claim interest only on the delayed payment of pension and other retiral benefits. As observed earlier, there is a duty cast on the State to disburse pension and retiral benefits immediately when they become due and it is the non-performance of this statutory duty which gives rise to the retiree to claim compensation by way of interest. This right to claim interest partakes the nature and character of the retiral benefits and is indeed a concomitant of the right to claim pension and retiral benefits and cannot be separated therefrom. This being so, a claim for interest by a pensioner cannot be equated with a claim for money simpliciter or any interest thereon arising out of contractual obligations. Moreover, in a claim for recovering pension or other retiral benefits which the State has wrongfully withheld or even when interest is claimed on those amounts, the plea of bar of limitation cannot be permitted to be raised because the State has defaulted in the performance of its duty in not paying the amount when it became due. In this view of the matter, it follows that when a retired government employee can seek his remedy by invoking the jurisdiction of his court under Article 226 of the Constitution to claim pension and retiral benefits by the issuance of a writ of mandamus or any other order or direction, he is equally entitled to seek relief in the same way for claiming interest only delayed payments which is an enforcement of an incident of the same right. It will, of course, be open to the State to plead and prove that there has been no delay muchless culpable delay on its part in*

*disbursing the amount so as to entitle a retired employee to any interest as claimed by him. To put it differently, if a retired government employee can show that there was delay in the payment of pension or any other retiral benefit to him, the onus would be on the State to show that it is not guilty of any culpable delay and if it is unable to discharge the onus or satisfy the court as to the reasons for the delay a direction to pay interest for the said period of delay would invariable issue."*

(15) In the case in hand, the special family pension as permissible to the petitioner was not paid since February 1991 till February 2008. No reason, plausible or otherwise, for non-release of the amount due is coming forth. There is no explanation for delay in payment of arrears. Only the responsibility is being shifted between Senior Superintendent of Police, Patiala and the Accountant General, Punjab. None, however, seems to consider the predicament of the widow who lost her son to the cause of nation, however, was paid a paltry sum of Rs. 375 per month as special family pension, though she was entitled to Rs. 1,075 per month in the year 1991 and at a higher rate with effect from 1st January, 1996. The Senior Superintendent of Police, Patiala, it seems had recommended the case for release of the correct and rightful amount to the petitioner, however, the Accountant General, Punjab has not come up with any explanation for not paying the amount due and yet it has been said on behalf of the Accountant General that the Senior Superintendent of Police, Patiala is required to pay the interest.

(16) Be that as it may, it stands established that the petitioner has been made to suffer on account of capricious, erratic and injudicious approach and action of the respondents. The respondents have utilised the amount that was due to be paid to the petitioner for considerable period.

(17) The petition is accordingly allowed.

(18) It is directed that the respondents would pay interest @ 18% per annum on the arrears. Interest would be paid within two months from the date of receipt of certified copy of the order.